IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5856 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI CHATURBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

Mr S.K.PATEL,AGP for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 28/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside the order at Annexure `H' passed by the Deputy Collector, Dholka in Consolidation case No. 1257 of 1984 dated 8th March, 1987 and confirmed by the

Deputy Secretary (Appeals) ,Revenue Department, Gujarat on 26th April, 1990 , at Annexure `I'.

The case of the petitioner was that he is an heir of one Chaturbhai. Chaturbhai was the owner of land bearing survey No. 1919 admeasuring 3 Acres- 24 Gunthas. The land was owned and possessed by four co-owners, (i) Lal Ragha, (ii) Shiva Bana, (iii) Chatur Nana and (iv) Jalu Bhula. One-fourth share from the said land was sold to Chaturbhai by a registered sale deed on May 12, 1970 . A copy of the sale deed is annexed to the petition. It was also stated that pursuant to the said sale deed, a mutation entry was effected being Entry No.10218 in the revenue record on 18th August, 1970 in Village form No.6. It appears that after about 17 years, proceedings were initiated by the Deputy Collector under the provisions of Fragmentation and Consolidation of Holdings Act, 1947 (`the Act') as the sale would result into fragment of land and it would violate provisions of law. After hearing the parties, sale was declared to be void. Said order was confirmed by the Deputy Secretary (Appeals).

When the petition came up for hearing, rule was issued and interim relief was granted. Today, the matter is called out for final hearing.

Mr. J.M.Patel for Mr. A.J.Patel for the petitioner raised several contentions. It is,however, not necessary to deal with them in view of the fact that petition can be disposed of on one and short ground. Counsel contended that the land was sold by one of the owners to the father of the petitioner as early as in May, 1970 by registered sale deed. Said fact is not disputed. Entry was made in the record rights in accordance with the said sale deed. After about 17 years, proceedings were initiated under the Act and the said entry. It cannot be said to be reasonable period. Reliance was placed in this connection on a decision of this Court in Ranchhodbhai vs. State, 1984 (2) GLR 1225. Considering a similar case, it was observed by this Court that if proceedings were initiated under the Act after gross delay or belated period and if the court is of the opinion that there was unreasonable delay on the part of the authorities in taking action, action cannot be said to be in accordance with law.

In the facts of the present case, learned counsel for the petitioner is right in contending that period of about 17 years , by no stretch of imagination, can be said to be reasonable period. No reason or ground is put forward as to why proceedings were not initiated for more than 17

years. Hence on this ground alone, petition deserves to be allowed and is accordingly allowed. Order passed by the Deputy Collector and confirmed by Deputy Secretary are quashed and set aside. Rule made absolute. No order as to costs.

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parekh